

City of Wilmington



MICHAEL S. PURZYCKI
Mayor

Ethics Commission

August 24, 2018

VIA EMAIL

The Honorable Michael S. Purzycki
The Honorable Hanifa Shabazz, D.H.L.
The Honorable Nnamdi O. Chukwuocha
The Honorable Ernest "Trippi" Congo II
The Honorable Zanthia Oliver
The Honorable Michelle Harlee
The Honorable Va'shun "Vash" Turner
The Honorable Yolanda McCoy
The Honorable Robert. A. Williams
The Honorable Charles M. "Bud" Freeland
The Honorable Ciro Adams
The Honorable Rysheema Dixon
The Honorable Samuel L. Guy, Esquire
The Honorable Loretta Walsh
Louis L. Redding City/County Building
800 N. French Street, 9th Floor
Wilmington, Delaware 19801

Dear Mayor Purzycki, President Shabazz, and City Council Members:

We write to provide an update on the work of the City of Wilmington Ethics Commission ("Commission") and to provide recommendations to the Mayor and Council regarding the City's Code of Conduct pursuant to the powers and duties provided to the Commission in Wilm. C. Code §2-344.

The reconstituted Ethics Commission first met on November 14, 2017. Since then, we have been working to modernize the Commission and the City's approach to ethics. To further those efforts, the Commission established the Futures Committee ("Committee"). Commissioner Faith Meisinger-Petit chairs the committee and is joined on it by Commission Vice-Chair Frank Hawkins and Commissioner Katherine M. Klocko.

The Committee first looked at the Commission's webpage and the information it makes

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readily available to the public. Based on the Committee's work, the Commission established a new webpage available at <https://www.wilmingtonde.gov/government/boards-commissions-and-committees/wilmington-ethics-commission>. The new webpage includes relevant code sections and the Commission's Rules. Additionally, it includes the Commission's schedule, agendas, and meeting minutes. Further, it includes a Frequently Asked Questions document to further inform the public regarding its processes.

After focusing on the webpage, the Committee turned to examine the City Code related to the Commission and ethical practices in the City. In consultation with the City Law Department, the Committee performed extensive research on the City's code and relevant portions of other jurisdiction's codes to identify best practices. That research and multiple meetings of the Committee and Commission, resulted in the substantive recommendations discussed below and contained in the attached proposed ordinance. These recommendations are the unanimous recommendations of the Commission. Commission is also aware of Council's code clean up initiative and endeavors to further that in the attached ordinance. The ordinance provides additional defined terms to promote clarity, the addition of female pronouns, and the elimination of outdated terms.

What follows is a brief summary of the substantive changes recommended by the Commission and the reasons for them. The changes are contained in the attached ordinance.

- The Commission recommends changing the name of this portion of the code to Code of Ethics from Code of Conduct. The proposed name is a more accurate description of what the code actually is and a code of conduct would be best administered through the Department of Human Resources.
- The Commission recommends changes to the definitions section such that the definitions of elected, appointed, and honorary officials are clear and the terms are used consistently throughout the code.
- The Commission recommends changing the confidentiality requirements for advisory opinions such that publically available versions of the opinions are created. The public version of the opinions will not include identifying information regarding the requester, but will provide helpful guidance to city employees and the public.
- The Commission recommends eliminating the affidavit of no conflict interest. This option subverts the purpose of requiring disclosures from elected and appointed officials. An elected or appointed official with no information to disclose can simply write N/A in the appropriate spaces on the disclosure form.
- The Commission recommends changing the annual deadline for disclosures to May 1 from March 1. This change is to facilitate accuracy and will ensure that filers have received relevant tax documents prior to filing the annual disclosure.
- The Commission recommends changing the code language to require all appointed and elected officials to complete the annual disclosure instead of listing out the title of each of the elected and appointed positions. The Commission further recommends empowering it to add additional city employees to the required filers upon the promulgation of a rule

to that effect. The titles of appointed positions change from time to time and this change will keep the Ethics Code from getting out of date.

- The Commission recommends requiring members of eight particular boards and commission to fill out an annual disclosure similar to that required of elected and appointed officials. The Commission further recommends empowering it to add additional members of boards and commission to the required filers upon the promulgation of a rule to that effect. This requirement would apply to eight boards and commission, including the Ethics Commission, that function as adjudicatory bodies or otherwise play a significant role in policy making.
- The Commission recommends expanding the responsibility for those who submit disclosures to disclosure information regarding adult family members with whom they live. This closes a potential loophole.
- The Commission recommends lowering the threshold for the disclosure of certain sources (amounts are not disclosed) of income to \$500. This provides a more accurate depiction of potential conflicts of interest.
- The Commission recommends changing the disclosure regarding gifts to change the threshold from a gift of over \$250 to an aggregate total of gifts over \$250 from the same source during the course of the year. This closes a potential loophole.
- The Commission recommends changing the co-signed loans disclosure to require the identity of the co-signer. This provides a more accurate depiction of potential conflicts of interest.
- The Commission recommends adding a real property disclosure, which requires the disclosure of an interest in real property that is purchased, leased, or condemned by the City. This is in keeping with best practices.
- The Commission recommends adding a board service disclosure requiring the disclosure of service on for profit and not for profit boards. This provides a more accurate depiction of potential conflicts of interest.

We hope Council will support these recommendations and pass the attached legislation reflecting them. We are happy to answer any questions you may have and to make a presentation on the proposed ordinance at the appropriate time.

Respectfully submitted,



William D. Johnston, Esquire
Ethics Commission Chair



Faith Meisinger-Petit
Ethics Commission Member
Futures Committee Chair

cc: Frank Hawkins – Vice Chair Ethics Commission
Denison H. Hatch, Jr., Esquire – Commissioner Ethics Commission
Katherine M. Klocko – Commissioner Ethics Commission
Melvin Phillips – Commissioner Ethics Commission
The Honorable Charles Toliver (Ret.) – Commissioner Ethics Commission
Tanya Washington – Chief of Staff
John Rago – Deputy Chief of Staff for Policy and Communications
Tom Ogden – Deputy Chief of Staff for Fiscal and Operations Management
Marchelle Basnight – City Council Chief of Staff
David Karas, Ph.D. – City Council Deputy Chief of Staff/Chief Strategist
Maribel Seijo – City Clerk
Luke W. Mette, Esquire – City Solicitor
William B. Larson, Jr. – Senior Assistant City Solicitor

**AN ORDINANCE TO AMEND CHAPTER 2 OF THE CITY CODE TO UPDATE
THE ETHICS PROVISIONS**

Sponsor:

WHEREAS, this Ordinance is part of a comprehensive set of revisions to the City Code to repeal certain provisions that are no longer necessary or appropriate and to amend sections that require clarification or updating; and

WHEREAS, pursuant to Sec. 2-344 of the City Code, the City Ethics Commission is empowered to make recommendations to the Mayor and City Council regarding the conduct for public employees and officials; and

WHEREAS, at its August 14, 2018 meeting, the City Ethics Commission discussed and unanimously approved several recommendations for changes to the City Employees' and Elected and Appointed Officials Code of Conduct, including renaming it City Ethics Requirements, and through a letter to the Mayor and Council recommended the proposed amendments to Chapter 2 of the City Code contained in this Ordinance; and

WHEREAS, City Council seeks to establish and encourage standards of ethical conduct in City government; and

WHEREAS, City Council seeks to provide clear, consistent guidance with respect to such standards by clarifying the City Code through defined terms, and by directing the Ethics Commission to create redacted versions of future advisory opinions available for public inspection; and

WHEREAS, City Council intends to improve government transparency, follow best practices, and improve the disclosure of potential conflicts of interest through updated financial disclosure requirements for elected officials, appointed officials, honorary officials,

and members of certain boards and commissions that are adjudicatory or play a significant role in policymaking; and

WHEREAS, City Council seeks to set a annual due date for financial disclosures that facilitates accurate reporting; and

WHEREAS, City Council deems it necessary and proper to amend Chapter 2 of the City Code to effectuate these changes.

**NOW, THEREFORE, THE COUNCIL OF THE CITY OF WILMINGTON
HEREBY ORDAINS:**

SECTION 1. Division 6 of Chapter 2, Article 5 is renamed City Ethics Requirements.

SECTION 2. Section 2-336 of the City Code, entitled "Title" is amended by deleting the stricken language and adding the underlined language to read as follows:

This division and the sections thereof shall be known as the City Ethics Requirements ~~Employees' and Elected and Appointed Officials Code of Conduct.~~

SECTION 3. Section 2-337 of the City Code, entitled "Definitions" is amended by deleting the stricken language and adding the underlined language to read as follows:

Appointed official means a city employee who is appointed by an elected official or appointed official.

City agency means any office, department, board, commission, committee, or entity of the city, ~~or of the mayor, or~~ and city council ~~of the city.~~

City employee means any person who receives compensation as an employee of the city or of a city agency; or who serves as an appointed member, trustee, director or the like of any city agency and who receives or reasonably expects to receive more than \$5,000.00 in compensation for such service in a calendar year, not including any reimbursement for expenses. "City employee" does not include honorary ~~city~~ officials.

Close relative means a person's domestic partner or parents, spouse, children, siblings by blood (whole or half), adoption or marriage ~~natural or adopted, and siblings of the whole and half blood.~~

Commission or ethics commission means the city ethics commission established by this division.

Compensation means any money, thing of value or any other economic benefit of any kind or nature whatsoever conferred on or received by any person in return for services rendered or to be rendered by himself or another.

Elected official means a person who is the mayor, treasurer, council president or a member of council.

Family member means a domestic partner or a person related by blood (whole or half), adoption, or marriage.

Filers means all persons identified in Sec. 2-345.1(b).

Financial interest in private enterprise means that a person:

- (1) Has a legal or equitable ownership interest in the enterprise of more than ten percent (one percent or more in the case of a corporation whose stock is regularly traded on an established securities market);
- (2) Is associated with the enterprise and received from the enterprise during the last calendar year or might reasonably be expected to receive from the enterprise during the current or the next calendar year income in excess of \$5,000.00 for services as an employee, officer, director, trustee or independent contractor; or
- (3) Is a creditor of a private enterprise in an amount equal to ten percent or more of the debt of that enterprise (one percent or more in the case of a corporation whose securities are regularly traded on an established securities market).

Household member means a domestic partner or an adult family member, who lives in the same residence, domicile, home, or apartment as the city employee, elected official, appointed official, or honorary official.

Honorary city official means a person who serves only in an honorary capacity as an appointed member, trustee, director or the like of any city agency and who receives or reasonably expects to receive no compensation or not more than \$5,000.00 in compensation for such service in a calendar year, not including any reimbursement for expenses.

Matter means any application, petition, request, business dealing or transaction of any sort.

Personal or private interest means an interest which tends to impair a person's independence of judgment in the performance of his or her duties with respect to that matter such as (1) any vote, action or inaction that would result in a financial benefit or detriment to accrue to the person or a close relative to a greater extent than such benefit or detriment would accrue to others who are members of the same class or group of persons; or (2) the person or a close relative has a financial interest in a private enterprise which enterprise or interest would be affected by any vote, action or

inaction on a matter to a lesser or greater extent than like enterprises or other interests in the same enterprise.

Private enterprise means any activity conducted by any person, whether conducted for profit or not for profit and includes the ownership of real or personal property. Private enterprise does not include any activity of the state or of any political subdivision or of any agency, authority or instrumentality thereof, or, more specifically, of the city or of any department, agency, board, commission, authority, or instrumentality thereof.

Officer means:

- (1) ~~The mayor;~~
- (2) ~~The president and all members of city council;~~
- (3) ~~The city treasurer;~~
- (4) ~~All city department heads, including the city clerk, the director of public safety, the budget director, and the director of planning;~~
- (5) ~~The chief judge and associate judges of the municipal court and all court commissioners; and~~
- (6) ~~The appointed and ex-officio members of city boards and commissions.~~

SECTION 4. Section 2-339 of the City Code, entitled “Legislative findings and statement of policy” is amended by deleting the stricken language and adding the underlined language to read as follows:

(a) *Generally.* The city council finds and declares as matters of public policy goals and objectives for all city elected officials, and appointed officials, city employees and honorary city officials; the provisions of this section.

(b) *The public trust.* In our democratic form of government, the conduct of all elected officials, appointed officials, city employees and honorary officials ~~officers and employees of the city~~ must hold the respect and confidence of the people. They must, therefore, avoid conduct which is in violation of their public trust or which creates a justifiable impression among the public that such trust is being violated.

(c) *Standards.* To ensure propriety and to preserve public confidence, all elected officials, appointed officials, city employees and honorary officials ~~officers and employees of the city~~ must have the benefit of specific standards to guide their conduct, and of some disciplinary mechanisms to guarantee uniform maintenance of those standards. Some standards of this type are so vital to government that violation thereof should subject the violator to criminal penalties.

(d) *Public service.* In our democratic form of government, it is both necessary and desirable that all citizens should be encouraged to assume public office and employment, and that, therefore, the activities of all elected officials, appointed officials, city employees and honorary officials ~~officers and employees of the city~~ should not be unduly limited ~~circumscribed~~.

(e) *Performance of duty.*

(1) Elected officials, appointed officials ~~and appointed city officers~~ and city employees shall promote the delivery of the highest level of quality service to all city residents, and shall promote a professional and efficient interchange of services and information between their respective city departments.

(2) Elected officials ~~city officers~~ are obligated to uphold the fundamental legal principles of our system of government, as set forth in the United States Constitution, the state Constitution, and the city charter, as well as all applicable provisions of federal, state and local law and court decisions. They are bound to do so, and the failure to so act shall constitute malfeasance in office.

(3) No city employee shall be penalized, disciplined or dismissed by any other city employee or appointed or elected officer for performing his or her duties in accordance with the city charter, the city Code or established city policy. Any city employee who believes that he or she has been penalized, disciplined or dismissed as the result of the performance of his or her duties may seek redress through the city's personnel grievance and appeals process.

(f) *Duty to report.*

(1) Whenever any elected official, ~~or appointed official city officer~~ or city employee is required in the normal course of his or her employment to provide information to the city council, the mayor's office, or to any city department, board or commission, such information shall be provided in a complete and accurate manner.

(2) Any elected official, ~~or appointed official city officer~~ or city employee who is aware of a material deficiency in the delivery of services to city residents or between departments, or is aware of a condition or circumstance which necessitates an appropriate response by city government shall report such matter to the appropriate city department in order that appropriate action may be taken.

(3) Elected officials, ~~or appointed officials city officer~~ or city employees in supervisory capacities shall encourage input from city employees regarding the operation of their respective departments. They should also recognize those city employees who contribute in significant ways to the improvement of city services or to the operational quality of their respective departments.

(g) ~~Deleted Abuse of office.~~

~~(1) No elected official city officer shall agree to sponsor legislation, or to influence in any manner, the formulation or passage of legislation in exchange for political contributions or promises thereof.~~

~~(2) No elected official city officer shall vote for, or promote in any manner whatsoever, legislation affecting any subject matter in which he or she has a substantial personal or private interest. Any such interest shall be disclosed by said elected official officer prior to a vote on any such legislation, and said elected officer shall vote "present" when called upon to vote.~~

~~(3) No elected official, or appointed official city officer or city employee shall utilize the influence of his or her office or position for personal pecuniary gain, or to unduly influence the behavior of others, or to avoid the legal consequences of his or her personal conduct.~~

(h) *Fairness.*

(1) Elected officials, and appointed officials, honorary officials ~~city officers~~ and city employees shall strive for the highest standard of fairness in all of their activities.

(2) In the workplace, elected officials, appointed officials, honorary officials ~~such city officers~~ and city employees should strive for the fair application of employment conditions and policies, and attempt to create a working environment in which all persons can achieve their full potential.

(3) When providing city services, elected officials, appointed officials, honorary officials ~~such city officers~~ and city employees shall strive to ensure that city services are provided equally to all members of the community. In so doing, they ~~such city officers and employees~~ should attempt to address barriers to such services which may arise due to conditions of poverty, conditions of disability or special needs, or to the effects of past patterns of discrimination.

(4) This standard of fairness shall also imply a commitment by elected officials, appointed officials, honorary officials ~~and appointed city officers~~ and city employees to prevent and eliminate any and all discrimination in any action by the city government itself, or by any of its departments, boards, commissions, agencies or any other of its authorized entities on the basis of race, creed, color, national origin, age, religion, sex, sexual orientation, marital status, economic status, gender identity, or handicap or other disability.

(i) *Use of private information.* In the course of their official responsibilities, elected officials, appointed officials, honorary officials ~~and appointed city officers~~ and city employees are often privy to categories of information which are of a private nature and are legally protected from public disclosure. Elected officials, ~~and appointed officials, and honorary officials~~ city officers and city employees shall maintain the privacy of such information, and they shall not take advantage of such information for personal gain, or the personal gain of friends or a family member.

(j) *Use of illegal drugs.* Illegal drug use poses a threat to the individual user, to the user's co-workers, and to the general public. Elected officials, ~~and appointed officials~~ city officers and city employees shall commit themselves to ensuring that the city's work force and work environment are drug free. All city employees, elected officials, and appointed officials ~~except elected officials and municipal court judges~~, are subject to the provisions of chapter 40 of this Code. In all cases, any conviction of the

provisions of the state code, the Uniform Controlled Substances Act (16 Del. C. § 4701 et seq.), shall be deemed to be a crime of moral turpitude.

SECTION 5. Section 2-340 of the City Code, entitled “Prohibitions relating to conflicts of interest and political activities” is amended by deleting the stricken language and adding the underlined language to read as follows:

(a) Restrictions on exercise of official authority.

(1) No city employee, elected official, appointed official ~~officer~~ or honorary city official may participate on behalf of the city in the review or disposition of any matter pending before the city in which he or she has a personal or private interest, provided, that upon request from any person with official responsibility with respect to the matter, any such person who has such a personal or private interest may nevertheless respond to questions concerning any such matter. ~~A personal or private interest in a matter is an interest which tends to impair a person's independence of judgment in the performance of his or her duties with respect to that matter.~~

(2) ~~Deleted~~ A person has an interest which tends to impair his or her independence of judgment in the performance of his or her duties with respect to any matter when:

a. ~~Any action or inaction with respect to the matter would result in a financial benefit or detriment to accrue to the person or a close relative to a greater extent than such benefit or detriment would accrue to others who are members of the same class or group of persons; or~~

b. ~~The person or a close relative has a financial interest in a private enterprise which enterprise or interest would be affected by any action or inaction on a matter to a lesser or greater extent than like enterprises or other interests in the same enterprise.~~

(3) In any case where a person has a statutory responsibility with respect to action or nonaction on any matter where he or she has a personal or private interest and there is no provision for the delegation of such responsibility to another person, the person may exercise responsibility with respect to such matter, provided, that promptly after becoming aware of such personal or private ~~conflict of~~ interest, he or she must files a written statement with the ethics commission fully disclosing the personal or private interest and explaining why it is not possible to delegate responsibility for the matter to another person.

(b) Restrictions on representing another's interest before the city.

(1) No ~~city employee, officer or~~ honorary city official may represent or otherwise assist any private enterprise with respect to any matter before the city agency with which the ~~employee, officer or~~ honorary official is associated by ~~employment or~~ appointment.

(2) No city employee, ~~officer or honorary city~~ elected official or appointed official may represent or otherwise assist any private enterprise with respect to any matter before the city.

(3) This subsection shall not preclude any city employee, elected official, appointed official, city officer or honorary city official from ~~appearing before the city or otherwise assisting any private enterprise with respect to any matter in the exercise of his or her official duties.~~

(c) *Restrictions on contracting with the city.*

(1) No ~~city officer or~~ elected official, appointed official or city employee shall benefit from or be interested in any contract with the city, nor solicit any contract and shall not enter into any contract with the city (other than an employment contract).

(2) No private enterprise in which an ~~city officer~~ elected official, appointed official or city employee has a legal or equitable ownership of more than 20 percent (more than one percent in the case of a corporation whose stock is regularly traded on an established securities market) shall enter into any contract with the city, other than an employment contract.

(d) *Postemployment restrictions.* No person who has served as a city employee, ~~city officer~~ elected official, appointed official or honorary city official shall represent or otherwise assist any private enterprise on any matter involving the city, for a period of two years after termination of his or her employment or elected or appointed status with the city, if he or she gave an opinion, conducted an investigation or otherwise was directly and materially responsible for such matter in the course of his or her official duties as a city employee, ~~officer~~ elected official, appointed official or honorary official.

(e) *Unauthorized disclosure of confidential information.* No person shall disclose any information required to be maintained confidential by the commission under sections 2-341(d), 2-342(b) or 2-345 of this chapter.

(f) *Abuse of office.*

(1) No elected official ~~city officer~~ shall agree to sponsor legislation, or to influence in any manner, the formulation or passage of legislation in exchange for political contributions or promises thereof.

(2) No elected official ~~city officer~~ shall vote for, or promote in any manner whatsoever, legislation affecting any subject matter in which he or she has a substantial personal or private interest. Any such interest shall be disclosed by said elected officer prior to a vote on any such legislation, and said elected official ~~officer~~ shall vote "present" when called upon to vote.

(3) No elected official, ~~or appointed official~~ city officer or city employee shall utilize the influence of his or her office or position for personal pecuniary gain, or to unduly influence the behavior of others, or to avoid the legal consequences of his or her personal conduct.

(4)

a. *Conduct of appointed ~~officials~~ city officers/city employees:* Appointed officials and city officers or city employees are prohibited under this section from engaging in

certain political activities during scheduled work hours or at any other time while present at a city facility or in a city vehicle or wearing an official city uniform. The prohibited activities by appointed ~~city officials~~ officials and city employees are:

- (1) Seeking to influence the giving or withholding of a vote for, any candidates in any general, special or primary election;
- (2) Soliciting monetary or other contributions on behalf of any political party, political action committee or candidate for public office;
- (3) Using e-mail for political campaign purposes during scheduled work hours or while present in a city facility;
- (4) Using any city resources for the activities described in 1, 2, 3; or,
- (5) Directing, ordering or otherwise coercing any elected official, appointed official ~~city officer~~ or city employee to violate this section.

Scheduled meetings of city council and its committees shall be considered the scheduled work hours for elected officials ~~council members, the mayor, the city treasurer, and all other city officers~~ and city employees in attendance on city business.

b. *Conduct of elected officials:* Elected officials are prohibited under this section from engaging in certain political activities during scheduled work hours or while present in a city facility. The prohibited activities for elected officials under this section (f)(4)(b) are:

- (1) Arranging, participating or directing others to engage in the conduct of any political phone bank. A violation of this section shall occur when two or more phones are used simultaneously for political campaigning purposes by city employees or others within or outside a city facility during the scheduled work hours of the participants;
- (2) Distributing or directing city employees to distribute campaign literature during scheduled work hours or while present in a city facility;
- (3) Erecting or directing city employees to erect campaign lawn signs during scheduled work hours or while present in a city facility; or
- (4) Using e-mail for political campaign purposes during scheduled work hours or while present in a city facility; or
- (5) Ordering or otherwise coercing any elected official, appointed official ~~city officer~~ or city employee to violate this section.

(g) *Criminal sanctions.*

- (1) Any person who knowingly or ~~wilfully~~ willfully violates any provision of this section shall be guilty of a Class A misdemeanor for which punishment may include up to 1 year incarceration at Level V and such fine up to \$2,300, restitution or other conditions as the court deems appropriate. ~~punishable for each such violation by imprisonment of not more than one year and by a fine not to exceed 10,000.00.~~

(2)

A prosecution for a violation of this section shall be subject to the time limitations of 11 Del. C. § 205.

(h) *Contracts voidable by court action.* In addition to any other penalty provided by law, any contract entered into by the city or any city agency in violation of this division shall be voidable by the city or city agency; provided, that in determining whether any court action should be taken to void such a contract pursuant to this division, the city or city agency shall consider the interests of innocent third parties who may be damaged thereby. Any court action to void any transaction must be initiated within 30 days after the city or city agency involved has, or should have, knowledge of such violation.

SECTION 6. Section 2-341 of the City Code, entitled “Code of Conduct” is renamed “Code of Ethics” and is amended by deleting the stricken language and adding the underlined language to read as follows:

(a) Each city employee, elected official, appointed official ~~city officer~~ and honorary ~~city~~ official shall endeavor to pursue a course of conduct which will not raise any justifiable suspicion among the public that he or she is engaging in acts which are in violation of his or her public trust and which course of conduct will not reflect unfavorably upon the city and its government.

(b) No city employee, elected official, appointed official ~~city officer~~ or honorary ~~city~~ official shall have any interest in any private enterprise nor shall he or she incur any obligation of any nature which is in substantial conflict with the proper performance of his or her duties in the public interest. No city employee, elected official, appointed official ~~city officer~~ or honorary ~~city~~ official shall accept other employment, any compensation, gift, payment of expenses or any other thing of monetary value under circumstances in which such acceptance may result in any of the following:

- (1) Impairment of independence of judgment in the exercise of official duties;
- (2) An undertaking to give preferential treatment to any person;
- (3) The making of a governmental decision outside official channels; or
- (4) Any adverse effect on the confidence of the public in the integrity of the government of the city.

(c) No city employee, elected official, appointed official ~~city officer~~ or honorary ~~city~~ official shall acquire a financial interest in any private enterprise which he or she has reason to believe may be directly involved in decisions to be made by him or her in an official capacity on behalf of the city.

(d) Deleted

~~Any city employee or city officer who has a financial interest in any private enterprise which is subject to the regulatory jurisdiction of, or does business with, any city agency, and any honorary city official who has a financial interest in any private enterprise which is subject to the regulatory jurisdiction of, or does business with, the~~

~~city agency on which he serves as an appointee shall file with the ethics commission a written statement fully disclosing the same. Such disclosure shall be confidential and the ethics commission shall not release such disclosed information, except as may be necessary for the enforcement of this section. The filing of such disclosure statement shall be a condition of commencing and continuing employment or appointed status with the city.~~

(e) No city employee, elected official, appointed official ~~city officer~~ or honorary ~~city~~ official shall use his or her public office to secure unwarranted privileges, private advancement or gain.

(f) No city employee, elected official, appointed official ~~city officer~~ or honorary ~~city~~ official shall engage in any activity beyond the scope of his or her public position which might reasonably be expected to require or induce him or her to disclose confidential information acquired by him or her by reason of his or her public position.

(g) No city employee, elected official, appointed official ~~city officer~~ or honorary ~~city~~ official shall, beyond the scope of his or her public position, disclose confidential information gained by reason of his or her public position nor shall he or she otherwise use such information for personal gain or benefit.

(h) No city employee, elected official, appointed official ~~city officer~~ or honorary ~~city~~ official, in the course of his or her public responsibilities, shall use the granting of sexual favors as a condition, either explicit or implicit, for an individual's favorable treatment by that person or a the city agency.

(i) Elected officials ~~city officers~~ are obligated to uphold the fundamental legal principles of our system of government. No elected official ~~such officer~~ shall knowingly fail to uphold those legal principles as set forth in the Constitution of the United States, the state Constitution and the city charter, as well as, all applicable provisions of federal, state and local law and court decisions, and any such knowing failure shall constitute malfeasance in office.

SECTION 7. Section 2-342 of the City Code, entitled "Waivers of restrictions and advisory opinions" is amended by deleting the stricken language and adding the underlined language to read as follows:

(a) Notwithstanding the provisions of sections 2-340 and 2-341 of this division, upon the written request of any city agency or of any individual who is or was a city employee, elected official, appointed official ~~city officer~~ or honorary ~~city~~ official, the ethics commission may grant a waiver to the specific prohibitions contained therein if the ethics commission determines that the literal application of such prohibition in a particular case is not necessary to achieve the public purposes of this division or would

result in an undue hardship on any city employee, elected official, appointed official ~~officer, official~~ or city agency, provided that such waiver does not conflict with the provisions of the city charter, including specifically, but not limited to, article IX, chapter 2 of the charter. Any such waiver may be granted only by written decision of the ethics commission. Any person who acts in good faith reliance upon any such waiver decision shall not be subject to discipline or other sanction hereunder with respect to the matters covered by the waiver decision provided there was a full disclosure to the ethics commission of all material facts necessary for the waiver decision.

(b) Any application for a waiver, any proceedings and any decision with respect thereto shall be maintained confidential by the commission provided that:

- (1) Public disclosure shall be made by the commission upon the written request of the applicant;
- (2) The commission may make such public disclosure as it determines is required in connection with the prosecution of any violation of this section;
- (3) The commission shall report to appropriate federal and state authorities substantial evidence of any criminal violation which may come to its attention; and
- (4) In the event that a waiver is granted, the waiver decision and the record of all proceedings relating thereto shall be open to public inspection.

(c) Upon the written request of any city employee, elected official, appointed official, ~~city officer, honorary city official~~ or city agency, the commission may issue an advisory opinion as to the applicability of this division to any particular fact situation. Any person who acts in good faith reliance upon any such advisory opinion shall not be subject to discipline or other sanction hereunder with respect to the matters covered by the advisory opinion provided there was a full disclosure to the ethics commission of all material facts necessary for the advisory opinion.

(d) Any application for an advisory opinion, any proceedings and any decision with respect thereto shall be maintained confidential by the commission provided that:

- (1) Public disclosure shall be made by the commission upon the written request of the applicant;
- (2) The commission may make such public disclosure as it determines is required in connection with the prosecution of any violation of this division; and
- (3) The commission shall report to appropriate federal, state and city authorities substantial evidence of any criminal violation which may come to its attention.

(e) Notwithstanding subsection (d), the commission shall create a public version of advisory opinions that shall be available for public inspection in a redacted form making best efforts to not disclose the identity of the requester.

SECTION 8. Section 2-343 of the City Code, entitled “Wilmington Ethics Commission—Establishment, membership, offices” is amended by deleting the stricken language and adding the underlined language to read as follows:

(a) There is hereby established the Wilmington Ethics Commission (commission) to administer and implement this division. The commission shall consist of seven members appointed by the mayor with the concurrence by resolution of a majority of all members of council. Not more than four members shall be registered with the same political party. No member shall hold any elected or appointed office under the government of the United States or the state, county, or city, or be a candidate for any such office. No member shall hold any political party office or an office in any political campaign. Members of the commission may be removed by the mayor, with the concurrence of a majority of all members of the council, for substantial neglect of duty, gross misconduct in office or violation of this division.

(b) Each member of the commission shall be appointed for a term of office of four years beginning on the day of their appointment ~~the second anniversary of mayoral term~~ and until the member's successor has been appointed and has qualified. No member shall serve for more than two full four-year terms. ~~When a vacancy occurs in the membership of the commission, it shall be filled by appointment for the unexpired portion of the term in the same manner as original appointments.~~

(c) The commission shall elect a chairman from among its membership. Four members of the commission shall constitute a quorum and, if a quorum is present, a vacancy on the commission shall not impair the right of the remaining members to exercise all the powers of the commission. Disciplinary hearings may be conducted and sanctions may be imposed only by the affirmative action of at least four members. Otherwise, the commission may delegate authority to the chairman to act for the commission between meetings.

(d) Each member of the commission shall receive no compensation.

(e) The city solicitor or his or her designee shall provide legal counsel to the commission and shall be the legal representative of the commission in connection with its duties hereunder, on a case by case basis, or determine that outside counsel is needed and obtain such outside counsel for a particular matter.

(f) The city solicitor or his or her designee shall investigate complaints referred by the commission and shall prosecute all complaints before the commission, except he or she shall not investigate, nor shall he or she prosecute, any complaint about the mayor; any and all investigations of complaints about the mayor and any prosecution thereof shall be conducted only by outside counsel selected for such purposes and approved by resolution of council with the concurrence of two-thirds of all of the members of

council. The investigatory and prosecutorial functions of the city solicitor shall otherwise be performed by personnel who are not serving as legal counsel to the commission.

(g) The principal office of the commission shall be in the city/county building, but it may meet, and exercise its power, at any other place in the city.

SECTION 9. Section 2-344 of the City Code, entitled “Same—Powers and duties” is amended by deleting the stricken language and adding the underlined language to read as follows:

The powers and duties of the ethics commission shall be to:

(1) Recommend to the mayor and city council from time to time such rules of ethics conduct for ~~public~~ city employees, elected officials, appointed officials and honorary officials as it shall deem appropriate.

(2) Issue written advisory opinions upon the request of any city employee, ~~city officer~~ elected official, appointed official, honorary ~~city~~ official or city agency as to the applicability of this division to any particular fact or situation.

(3) Refer to the city solicitor to investigate any alleged violation of this division and, after notice and hearing, to recommend by resolution such disciplinary action as it may deem appropriate, to the city agency employing the city employee, elected official or appointed official ~~or city officer~~, the city agency with which the honorary ~~city~~ official is associated, the agency or official who appointed such officer or official, or other appropriate official or agency as the commission shall determine. The commission may also dismiss, without reference to the city solicitor, any complaint which the commission determines is frivolous or fails to state a violation.

(4) Report to the appropriate federal, state or city authorities any substantial evidence of a violation of any criminal law which may come to its attention in connection with any proceeding whether advisory or disciplinary.

(5) Maintain a file of its proceedings, waiver decisions and advisory opinions with a view toward achieving consistency of opinions and recommendations subject to the confidentiality requirements of sections 2-342(b) and 2-345(h).

(6) Follow the procedural rules specified in section 2-345 and establish such other procedural rules as shall not be inconsistent with the rules prescribed therein.

(7) Subpoena witnesses, compel their attendance and testimony, administer oaths and affirmations, take evidence and require by subpoena the production of books, papers, records or other evidence needed for the performance of the commission's duties or exercise of its powers.

(8) Prescribe forms for reports, statements, notices and other documents required by law.

- (9) Prepare and publish manuals and guides explaining the duties of individuals covered by this division, and giving instructions and public information materials to facilitate compliance with, and enforcement hereof.
- (10) Provide assistance to city agencies, city employees, elected officials, appointed officials, and honorary and officials in administering the provisions of this law.
- (11) Prepare reports and studies to advance the purposes of this division.
- (12) Contract for any services which cannot satisfactorily, practically, or ethically be performed by the office of the city solicitor.
- (13) Request appropriate city agencies to provide such professional assistance as it may require in the discharge of its duties.

SECTION 10. Section 2-345.1 of the City Code, is renamed “Financial disclosure requirements of elected officials and appointed officials and certain city employees and members of certain boards” and is amended by deleting the stricken language and adding the underlined language to read as follows:

(a) *Findings.* The purpose of this section is to require annual financial disclosure by elected officials and ~~certain~~ appointed officials and certain city employees and members of boards and commissions of city government.

(b) *Applicability.* The requirements of this section shall be applicable to “filers” ~~“city officials”~~ defined as all elected officials, appointed officials, members of the boards and commissions listed below and any city employee or member of the boards and commissions designated by rule of the ethics commission. ~~The enumerated boards and commissions are as follows: of the city government and the who are in the appointed positions enumerated below, specifically:~~

Audit Review Committee

Board of License & Inspection Review

City Officer & Employee Residency Review Board

City Planning Commission

Wilmington Design Review and Preservation Commission

Wilmington Ethics Commission

Wilmington Water, Sewer, and Stormwater Citizens Advisory Board

Zoning Board of Adjustment

~~The mayor;~~

~~The city treasurer;~~

~~The president of city council;~~
~~All members of city council; and~~
~~The officials in the following appointed positions of city government:~~
~~Administrative assistant to the mayor;~~
~~Special assistant to the mayor;~~
~~Executive assistant to the mayor;~~
~~Mayor's director of communications;~~
~~Mayor's office manager;~~
~~Secretary to the administrative assistant;~~
~~Mayor's scheduling secretary;~~
~~Mayor's office receptionist;~~
~~Director of cultural affairs;~~
~~Cultural affairs program manager;~~
~~Community affairs advisors (2);~~
~~Constituent services officer;~~
~~Director of economic development;~~
~~Director of enterprise communities;~~
~~Director of public safety;~~
~~Public safety administrative assistant;~~
~~City auditor;~~
~~Auditing administrative assistant;~~
~~City solicitor;~~
~~First assistant city solicitor;~~
~~All assistant city solicitors;~~
~~Executive legal secretary;~~
~~Director of finance and deputy director;~~
~~Chief of police and two inspectors;~~

~~Chief of fire and two deputy chiefs of fire;~~
~~Commissioner of licenses and inspections and deputy commissioner;~~
~~Director of parks and recreation;~~
~~Director of personnel and deputy director;~~
~~Director of planning;~~
~~Commissioner of public works;~~
~~Director of real estate and housing;~~
~~Director of youth and families;~~
~~Education specialist;~~
~~Marketing and special projects coordinator;~~
~~Family support partnership coordinator;~~
~~Economic development manager/Brownfields assessment coordination;~~
~~Economic development program manager;~~
~~Deputy city treasurer;~~
~~Administrative assistant to the city treasurer;~~
~~All appointed staff of city council, including the city clerk;~~
~~Executive secretary/deputy clerk; and~~
~~All executive secretaries.~~

(c) Financial disclosure report; alternative of affidavit of no conflict of interest.

(1) Reporting requirements. The financial disclosure requirements are as follows:

a. Every filer ~~city official~~ as defined in subsection (b), above, shall file a financial disclosure report ("financial disclosure report" or "report") disclosing financial information ~~interests for himself or herself and his or her household members for the~~ prior calendar year, as hereinafter provided. Each report shall be on a form prescribed by the ethics commission, shall be signed by the filer ~~city official~~, shall be notarized and shall include at least the following information:

(1) The name and position of the filer ~~city official~~; and

(2) The name, instrument and nature of ownership, and any position of management held by, or constructively controlled by, the filer or his or her household members ~~city official~~ in any business enterprise in which legal or equitable ownership is in excess of

\$5,000.00 fair market value or from which income of more than \$5,000.00 was derived during the preceding calendar year. Time or demand deposits in a financial institution, or any debt instrument having a fixed yield shall not be listed unless convertible to an equity instrument; and

(3) ~~The name, address and type of practice, without reference to the identity of any individual clients served, of any professional organization in which the city official filer or his or her household members are~~ is the sole practitioner, officer, director or partner, or serves in any advisory capacity, or which is constructively controlled by the filer or his or her household members ~~city official~~, from which income of more than \$5,000.00 was derived during the preceding year; provided, however, that any such organization construed as a business enterprise and reported pursuant to paragraph (2) of this subsection need not be reported under this subsection; and

(4) ~~For all filers except honorary officials, the source of each of the following items received by the filer or his or her household members during the preceding calendar year:~~

(a) Any income derived for services rendered exceeding \$1,0500.00 from a single source, unless such income is otherwise identified pursuant to paragraph (2) or (3) of this subsection; or

(b) Any capital gain exceeding \$1,0500.00 from a single source other than from the sale of a residence occupied by the city official; or

(c) Any reimbursement for expenditures exceeding \$1,000.00 from a single source; or

(d) Any honoraria; or

(e) Any gift(s) with an aggregate value in excess of \$250.00 received from any person other than a gift from a close relative or family member, identifying also in each case the amount of each such gift. For purposes of compliance with this gift reporting obligation, the recipient may rely in good faith upon the representation of the source of the gift as to the gift's value; and

(5) ~~For all filers except honorary officials, the name of each creditor to whom the city official filer or household members were was~~ indebted for a period of 90 consecutive days or more during the preceding calendar year in an aggregate amount in excess of \$1,000.00.

(6) Disclosure of whether the ~~city official filer or household members have~~ has co-signed a loan with anyone who has done business with the city or is an city employee and, if yes, the identity of that person or entity. ~~of the city government. (Yes or No?)~~

(7) Disclosure of any direct or indirect interest in any real property by filer or household members which was sold or leased to the city or any of its departments, boards, commissions, authorities, or other agencies; purchased or leased from the city or any of its departments, boards, commissions, authorities, or other agencies; or was subject to any

condemnation proceeding by the city or any of its departments, boards, commissions, authorities, or other agencies.

(8) Identify any corporate and/or non-profit board memberships of the filer and household members, including the nature of the entity's business and whether it operates within the City of Wilmington.

~~b. The affidavit of no conflict of interest, authorized by the provisions that are set forth in section 2-345.2 of this chapter, may be filed instead of the financial disclosure report, otherwise required by this section, by any city official to whom the financial disclosure requirement as are applicable as provided in subparagraph (b) "applicability" of this section, in any instance in which the name of the specific parties would otherwise have to be disclosed under the requirements of this financial disclosure section.~~

(2) *Definitions.* For purposes of this section the following words and phrases shall be defined as such words and phrases are defined in 29 Del. C. Ch. 58, Subch. II, the State financial disclosure law and any amendments thereto:

"Constructively controlled";

"Instrument of ownership";

"Position of management";

"Fair market value";

"Equity instrument";

"Time or demand deposits";

"Debt instrument";

"Professional organization";

"Income for services rendered";

"Capital gain";

"Reimbursement for expenditures";

"Honoraria";

"Business enterprise"; and

"Gift"

All of such words and phrases shall be read for purposes of this section in terms of their applicability to filers ~~"city officials"~~ and not to State of Delaware "public officers."

(d) *Sworn certification.* Each report required by this section shall contain a sworn certification by the filer ~~city official~~ that the filer ~~city official~~ has read the report, and that to the best of the filer's ~~city official's~~ knowledge and belief it is true, correct and

complete, and that the filer ~~city official~~ has not and will not transfer any assets, interests or property for the purpose of concealing it from disclosure while retaining an equitable interest therein.

(e) *Time of filing.* Not later than 14 days after becoming a filer ~~city official~~, as defined in this section, the report required by this section shall be filed. Thereafter, the report shall be filed on ~~March~~ May 1 of each year.

(f) *Place of filing.* Each report required by this section shall be filed with the ethics commission, whose records shall be retained by the law department.

(g) *Retention of reports.*

(1) The ethics commission shall keep the reports required by this section on file for so long as the person submitting such report is an city official ~~elected~~ official, appointed official, honorary official or city employee of the city and for at least five years thereafter.

(2) The reports filed pursuant to this section shall be made available at reasonable hours for public inspection and copying pursuant to Chapter 100 of Title 29 of the Delaware Code.

(h) *Violations and penalties.*

(1) ~~No city elected official or appointee subject to the provisions of this section filer shall be allowed to take the oath of office or enter into or continue upon his or her duties, nor shall he or she receive any compensation from city funds, unless he or she has filed a financial disclosure report as required by this section.~~

(2) ~~Any filer who knowingly Filing a false financial disclosure report shall constitute the Class A misdemeanor of "filing a false written statement" and upon conviction thereof shall be punishable as provided in Title 11, the Delaware Criminal Code. (See 11 Del. C. § 1233). Knowingly filing files a financial disclosure report that is false in any material respect shall be guilty of a class A misdemeanor for which punishment may include up to 1 year incarceration at Level V and such fine up to \$2,300, restitution or other conditions as the court deems appropriate, punishable upon conviction thereof by a fine in an amount up to \$2,300.00.~~

(3) ~~Any filer who Willfully failing fails to file a financial disclosure report shall be guilty of a class B misdemeanor for which punishment may include up to 6 months incarceration at Level V and such fine up to \$1,150, restitution or other conditions as the court deems appropriate, punishable upon conviction thereof by a fine in an amount up to \$1,150.00.~~

SECTION 11. Section 2-345.2 of the City Code, entitled "Affidavit of absence of conflict of interest" is deleted in its entirety.

SECTION 12. This Ordinance shall become effective upon its passage by City Council and approval by the Mayor. The new financial disclosure forms reflecting these code changes shall be due for the first time on May 1, 2019.

First Reading....., 2018
Second Reading..... 2018
Third Reading.....

Passed by City Council,

President of City Council

ATTEST: _____
City Clerk

Approved this ____ day of _____, 2018.

Mayor

SYNOPSIS: This Ordinance is part of a comprehensive set of revisions to the City Code to repeal certain provisions that are no longer necessary or appropriate and the amend sections that require clarification or updating. Additionally, it includes substantive recommendations from the City Ethics Commission to improve and modernize ethics requirements in the City. This Ordinance amends Chapter 2, Article V, Division 6 to make the following substantive changes: (1) changes the title from Code of Conduct to Code of Ethics to more accurately reflect the substance of the code; (2) provides an updated definitions section to improve clarity of the code; (3) requires the Ethics Commission to make advisory opinions publically available in a form redacted to protect the name of the requester, which will help educate the public and city employees; (4) eliminates the practice of permitting an absence of conflict of interest affidavit, which is not in keeping with best practices of financial disclosures; (5) changes the annual filing deadline to May 1 to ensure filers have received all financial and tax documents to help them make accurate disclosures; (6) amends those required complete financial disclosures to include members of certain boards and commission in addition to all elected officials and appointed officials to improve transparency; (7) requires financial disclosures of household members to improve transparency; (8) lowers the thresholds for certain income related financial disclosures to improve transparency; (9) amends the gift

disclosure to include the aggregate value of gifts from a particular source over the calendar year to improve transparency; (10) revises the co-signed loans disclosure to require disclosure of the co-signer to improve transparency; (11) adds a real property disclosure for property involving city expenditure which ensures transparency of such acts; and (12) adds a requirement to disclose board service, which is in keeping with best practices.

FISCAL IMPACT STATEMENT: This Ordinance has no anticipated fiscal impact.